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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 09/208,814 | 12/09/1998 | R. PADMANABHA RAO | 939V-310-1-1 | 8650 |

7590 03/07/2003

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| EXAMINER | |
|---|---|
| HUYNH, SON P | |
| **ART UNIT** | **PAPER NUMBER** |
| 2611 | 8 |

DATE MAILED: 03/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 09/208,814 | RAO | |
| | Examiner | Art Unit | |
| | Son P Huynh | 2611 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *03* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *24 July 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *60-62 and 65-68* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *60-62 and 65-68* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *09 December 1998* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☒ Interview Summary (PTO-413) Paper No(s). *9* .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claims 60-62, 65-68 have been considered but are moot in view of the new ground(s) of rejection.

### *Double Patenting*

2. Claims 60 - 62 and 65 – 68 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable Rao (U.S. 5,940,738), in view of Graves et al. (US 5,029,333), and further in view of McNamara et al. (US 4,533,948).

Regarding claim 60, claim 15 of '738 recites a digital information distribution system comprising:

a digital information stream server comprising:

means for storing a digital information stream of predetermined duration;

network adaptation means for transmitting digital information onto a first communication network on a predetermined channel;

request receiving means for receiving requests for the digital information stream from the first communication network;

scheduling means for directing the digital information stream to the network adaptation means for transmission over the first communication network on the predetermined channel at a predetermined time, if a request for the digital information stream is received by the request receiving means; and

opportunistic programming means for directing digital information to the network adaptation means for transmitting over the first communication network only if the digital information stream is not being transmitted (see col. 25, line1 – col. 26, line 7).

However, Claim 15 of '738 does not explicitly recite a "network interface" comprising:

request receiving means for receiving request originally for the subscriber units; and

request relaying means for relaying only requests from privileged subscriber units for the digital information stream to the digital information stream server; and

means for relaying the digital information stream from the "first communication network" to the requesting ones of the privileged subscriber units via the "second communication network.

Graves et al. teaches a network interface (the active pedestal 12) comprising:

request receiving means (Optical Tx-Rx 80) for receiving request originally for the subscriber units; and

request relaying means(Optical Tx-Rx 24') for relaying requests from subscriber units for the digital information stream to the digital information stream server (digital terminal 10); and

means (Optical Tx-Rx 80) for relaying the digital information stream from the "first communication network" to the requesting ones of the subscriber units via the "second communication network (see figure 4 and col. 7, line 51+). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify claim 15 of '738 to incorporate the feature as taught by Graves in order to provide program to user faster thereby increase efficient of video on demand service. Graves further discloses the broadband control circuit 50 contains a memory which stores a provisioning map for each subscriber and each transmission direction in accordance with which it control the downstream selector 70 and the upstream selector 72 and Upstream selector 72 is used for supplying a broadband signal component received from subscriber to digital terminal 10 (See figure 4; col. 8, lines 43-47; col. 12, lines 46-55). However, neither claim 15 of '738 nor Graves specifically disclose relaying only requests from privileged subscriber units.

McNamara discloses the access to CATV communication resources is controlled so that unauthorized users are denied access and authorized users are granted access (see col. 2, lines 1-3). It is necessary to include that relaying only requests for privileged subscriber units. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify claim 15 of '738 and Graves to incorporate the feature as taught by McNamara in order to reduce upstream bandwidth between the pedestal and server thereby increase efficiency in video on demand service.

Regarding claim 61, claim 15 of '738 recites the scheduling in the rejection of claim 60 further comprising means for:

if a request for the digital information stream is received prior to a predetermined time, initiating transmission of the digital information stream starting at a beginning of the digital information stream over the predetermined channel at the predetermined time; and

if the request for the digital information stream is received after the predetermined time, initiating transmission of the digital information stream at a point in the digital information stream determined relative to the predetermined time so that the digital information stream ends the predetermined duration after the predetermined time (see col. 24, lines 53-67).

Regarding claim 62, Graves teaches the first communication network is a hierarchical network (see figures 2-4).

Regarding claim 65, claim 16 of '738 recites a digital information distribution system comprising:

a digital information stream server comprising:

means for storing a digital information stream of predetermined duration;

network adaptation means for transmitting digital information onto a first communication network on a predetermined channel;

request receiving means for receiving requests for the digital information stream from the first communication network;

scheduling means for directing the digital information stream to the network adaptation means for transmission over the first communication network on the predetermined channel at a predetermined time, if a request for the digital information stream is received by the request receiving means; and

opportunistic programming means for directing digital information to the network adaptation means for transmitting over the first communication network only if the digital information stream is not being transmitted wherein the opportunistic program means transmits digital information via the channel only upon request of a subscriber unit when the digital information stream is not being transmitted (see col. 25, line 1-col. 26, line 12). However, Claim 15 of '738 does not explicitly recite a "network interface" comprising:

request receiving means for receiving request originally for the subscriber units; and

request relaying means for relaying only requests from privileged subscriber units for the digital information stream to the digital information stream server; and

means for relaying the digital information stream from the "first communication network" to the requesting ones of the privileged subscriber units via the "second communication network.

Graves et al. teaches a network interface (the active pedestal 12) comprising:

request receiving means (Optical Tx-Rx 80) for receiving request originally for the subscriber units; and

request relaying means(Optical Tx-Rx 24') for relaying requests from subscriber units for the digital information stream to the digital information stream server (digital terminal 10); and

means (Optical Tx-Rx 80) for relaying the digital information stream from the "first communication network" to the requesting ones of the subscriber units via the "second communication network (see figure 4 and col. 7, line 51+). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify claim 15 of '738 to incorporate the feature as taught by Graves in order to provide program to user faster thereby increase efficient of video on demand service. Graves further discloses the broadband control circuit 50 contains a memory which stores a provisioning map for each subscriber and each transmission direction in accordance with which it control the downstream selector 70 and the upstream selector 72 and Upstream selector 72 is used for supplying a broadband signal component received from subscriber to digital terminal 10 (See figure 4; col. 8; lines 43-47; col. 12, lines 46-55). However, neither claim 15 of '738 nor Graves specifically disclose relaying only requests from privileged subscriber units.

McNamara discloses the access to CATV communication resources is controlled so that unauthorized users are denied access and authorized users are granted access (see col. 2, lines 1-3). It is necessary to include that relaying only requests for privileged

subscriber units. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify claim 15 of '738 and Graves to incorporate the feature as taught by McNamara in order to reduce upstream bandwidth between the pedestal and server thereby increase efficiency in video on demand service.

Regarding claim 66, claim 15 of '738 in view of Graves and McNamara teaches a system as discussed in the rejection of claim 60. Claim 16 of '738 further recites the opportunistic programming means transmits digital information to the network adaptation means for transmission over the first communication network only if the digital information stream is not being transmitted (see col. 26,lines 3-7). It would have been obvious to one of ordinary skill in the art that the opportunistic programming means transmits digital information via the channel whenever the digital information stream is not being transmitted in order to reduce wasting of unused bandwidth.

Regarding claim 67, Claim 15 of '738 in view of Graves and McNamara teaches the system as discussed in the rejection of claim 60. Claim 16 of '738 further recites the opportunistic programming means transmits digital information to the network adaptation means for transmission over the first communication network only if the digital information stream is not being transmitted (see col. 26,lines 3-7). It would have been obvious to one of the ordinary skill in the art that it is necessary to include an alternative video program in the digital information in to provide video program to user.

Regarding claim 68, claim 15 of '738 in view of Graves and McNamara teaches a system as discussed in the rejection of claim 60. Official Notice is taken that transmitting computer data in digital information is well known in the art. Therefore, it would have been obvious one of the ordinary skill in the art at the time the invention was made to modify claim 15 of '738 and Graves and McNamara to incorporate a well-known feature in the art in order to provide computer data to user.

***Conclusion***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son P Huynh whose telephone number is 703-305-1889. The examiner can normally be reached on 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on 703-305-4380. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the customer service office whose telephone number is 703-306-0377.

ANDREW FAILE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Son P. Huynh
February 18, 2003